

July 1, 1955

Warren E. Waters
Deputy Attorney General

Attorney General

Kenneth L. Cowan, Director
Division of Inheritance Taxes
State Tax Commission
Concord, New Hampshire

Copy in opinion

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CONCORD, N.H.

Dear Sir:

In a letter of June 27, 1955, you stated that it has been the previous administrative practice of your Division to reduce for purposes of taxation the amount deemed to pass to a surviving joint tenant under the provisions of R.L., c. 87, ss. 3 and 4, by the amount of any sum which the survivor avers by affidavit to have been paid by him on account of the funeral expenses of the decedent. You refer to R.L., c. 87, s. 37; and you request our opinion whether the administrative practice alluded to has a sound basis of law.

It is our view that there is no authority for the practice described.

R.L., c. 87, ss. 3 and 4, in practical effect establish a rebuttable presumption that funds or property held in joint ownership were furnished by the deceased joint tenant. The tax of chapter 87 is imposed on the operation of law which vests full title in the survivor, except to the extent that such presumption has been overcome. And it is only in the measure by which the presumption is rebutted that a lesser amount than the entire amount of the joint property is seen to pass to the surviving joint tenant. Specifically, payments by the survivor made outside the joint fund have no effect upon the quantum of the fund to be taxed to the owner still living.

R.L., c. 87, s. 37, precludes a contrary interpretation. The latter part of the sentence of which the section cited is composed most categorically delineates the deductions allowed against the fund otherwise taxable. Deductions with respect to expenditures made otherwise than in the course of administration are not there listed.

While administrative practice thereunder may be of great weight in the interpretation of an ambiguous statute, that principle has no application when the statutory language is clear, Op. Justices, 90 N.H. 568, 572. The statutory language in the present case being precise and furnishing no authorization for the practice under consideration, we must rule as hereinbefore set forth.

Very truly yours,

Warren E. Waters
Deputy Attorney General